

**Introduced by Senator Morrell**

February 27, 2015

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An act to amend Sections 10232.3, 10232.45, and 10238 of the Business and Professions Code, and to amend Section 25102.2 of the Corporations Code, relating to real estate investments.

LEGISLATIVE COUNSEL'S DIGEST

SB 647, as introduced, Morrell. Real estate investments: securities: qualification exemption.

(1) Existing law, the Real Estate Law, requires any transaction that involves the sale of, or an offer to sell, a note secured directly by an interest in one or more parcels of real property, or the sale of an undivided interest in a note secured directly by one or more parcels of real property, to comply with specified requirements. Existing law limits the allowable percentage of the current market value of a property, as specified, to be the aggregate principal amount of the note or interest sold. Existing law requires a broker to make reasonable efforts to ensure the offer or sale of notes or interest in notes secured by a lien on real property or a business opportunity meet certain criteria, including, among others, the investment in the notes is suitable and appropriate for the purchaser. To meet this requirement, a broker may obtain a completed investor questionnaire from each person to whom the broker offers or sells the notes and deeds of trust.

This bill would provide that these requirements do not apply to the sale of an undivided interest in a note secured directly by one or more parcels of real property. The bill would modify the allowable percentage of the current market value that can be sold, as specified. The bill would require the investor questionnaire to be completed within a specific time before the sale, modify the requirement for subsequent

questionnaires, and remove the necessity of a broker obtaining an annually updated completed investor questionnaire from each person to whom the broker sold notes and deeds of trust. The bill would update the address of the Real Estate Commissioner on a required notice.

(2) Existing law, the Corporate Securities Law of 1968, provides that it is unlawful to offer or sell any security in this state unless the offer and sale of the security has been qualified with the Commissioner of Business Oversight, or the security or transaction is exempt from qualification. That law also provides that all offers and sales of a security are subject to antifraud provisions, which requires information provided to offerees and purchasers to be true and to not omit any material facts necessary to prevent the statements made from being misleading. That law requires an issuer engaged in the business of purchasing, selling, financing, or brokering real estate, that relies on specified transactions exemptions or a securities exemption from qualification for an offering that involves the offer or sale of securities to a person who is not an accredited investor to provide additional information to the Commissioner of Business Oversight regarding the nature of the proposed offering on a form prescribed by the commissioner.

This bill would remove from these requirements to provide additional information to the commissioner, an offering of securities that relies on an exemption for a security that is a promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10232.3 of the Business and Professions
- 2 Code is amended to read:
- 3 10232.3. (a) Any transaction that involves the sale of or offer
- 4 to sell a note secured directly by an interest in one or more parcels
- 5 of real property ~~or the sale of an undivided interest in a note secured~~
- 6 ~~directly by one or more parcels of real property~~ shall adhere to all
- 7 of the following:
- 8 (1) Except as provided in paragraph (2), the aggregate principal
- 9 amount of the note ~~or interest~~ sold, together with the unpaid
- 10 principal amount of any encumbrances upon the real property

senior thereto, shall not exceed the following percentages of the current market value of each parcel of the real property, as determined in writing by the broker or appraiser pursuant to Section 10232.6, plus the amount for which the payment of principal and interest in excess of the percentage of current market value is insured for the benefit of the holders of the note ~~or interest~~ by an insurer admitted to do business in this state by the Insurance Commissioner:

- (A) Single-family residence, owner occupied..... 80%
- (B) Single-family residence, not owner occupied..... 75%
- (C) Commercial *properties* and income-producing properties *not described in (B) or (E)*..... 65%
- (D) Single-family residentially zoned lot or parcel which has installed offsite improvements including drainage, curbs, gutters, sidewalks, paved roads, and utilities as mandated by the political subdivision having jurisdiction over the lot or parcel..... 65%
- (E) *Land that produces income from crops, timber, or minerals*..... 60%
- ~~(F)~~
- (F) Land that *is not income producing but* has been zoned for (and if required, approved for subdivision as) commercial or residential development..... 50%
- ~~(F)~~
- (G) Other real property..... 35%

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the note ~~or interest~~ sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market value of unimproved real property, except in the case of a single-family zoned lot or parcel as defined in paragraph (1), which shall not exceed 65 percent of the current fair market value of that lot or parcel, plus the amount insured as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies

1 upon for his or her determination, which shall be retained as a part  
2 of the broker's record of the transaction. Either a copy of the  
3 statement or the information contained therein shall be included  
4 in the disclosures required pursuant to Section 10232.5.

5 (3) A copy of the appraisal or the broker's evaluation, for each  
6 parcel of real property securing the ~~note or interest~~, *note*, shall be  
7 delivered to the purchaser. The broker shall advise the purchaser  
8 of his or her right to receive a copy. For purposes of this paragraph,  
9 "appraisal" means a written estimate of value based upon the  
10 assembling, analyzing, and reconciling of facts and value indicators  
11 for the real property in question. A broker shall not purport to make  
12 an appraisal unless the person so employed is qualified on the basis  
13 of special training, preparation, or experience.

14 (4) For construction or rehabilitation loans, where the amount  
15 withheld for construction or rehabilitation at the start of the project  
16 exceeds one hundred thousand dollars (\$100,000), the term "current  
17 market value" may be deemed to be the value of the completed  
18 project if all of the following safeguards are met:

19 (A) An independent neutral third-party escrow holder is used  
20 for all deposits and disbursements relating to the construction or  
21 rehabilitation of the secured property.

22 (B) The loan is fully funded, with the entire loan amount to be  
23 deposited in escrow prior to recording of the deed or deeds of trust.

24 (C) A comprehensive, detailed draw schedule is used to ensure  
25 proper and timely disbursements to allow for completion of the  
26 project.

27 (D) The disbursement draws from the escrow account are based  
28 on verification from an independent qualified person who certifies  
29 that the work completed to date meets the related codes and  
30 standards and that the draws were made in accordance with the  
31 construction contract and draw schedule. For purposes of this  
32 subparagraph, "independent qualified person" means a person who  
33 is not an employee, agent, or affiliate of the broker and who is a  
34 licensed architect, general contractor, structural engineer, or active  
35 local government building inspector acting in his or her official  
36 capacity.

37 (E) An appraisal is completed by a qualified and licensed  
38 appraiser in accordance with the Uniform Standards of Professional  
39 Appraisal Practice (USPAP).

1 (F) The documentation includes a detailed description of the  
2 actions that may be taken in the event of a failure to complete the  
3 project, whether that failure is due to default, insufficiency of  
4 funds, or other causes.

5 (G) The entire amount of the loan does not exceed two million  
6 five hundred thousand dollars (\$2,500,000).

7 (5) For construction or rehabilitation loans, where the amount  
8 withheld for construction or rehabilitation at the start of the project  
9 is one hundred thousand dollars (\$100,000) or less, the term  
10 “current market value” may be deemed to be the value of the  
11 completed project if all of the following safeguards are met:

12 (A) The loan is fully funded, with the entire loan amount to be  
13 deposited in escrow prior to recording of the deed or deeds of trust.

14 (B) A comprehensive, detailed draw schedule is used to ensure  
15 proper and timely disbursements to allow for completion of the  
16 project.

17 (C) An appraisal is completed by a qualified and licensed  
18 appraiser in accordance with the Uniform Standards of Professional  
19 Appraisal Practice (USPAP).

20 (D) The documentation includes a detailed description of the  
21 actions that may be taken in the event of a failure to complete the  
22 project, whether that failure is due to default, insufficiency of  
23 funds, or other causes.

24 (E) The entire amount of the loan does not exceed two million  
25 five hundred thousand dollars (\$2,500,000).

26 (6) If a ~~note or an interest~~ will be secured by more than one  
27 parcel of real property, for the purpose of determining the  
28 maximum amount of the ~~note or interest~~, *note*, each security  
29 property shall be assigned a portion of the note or interest ~~which~~  
30 *that* shall not exceed the percentage of current market value  
31 determined by, and in accordance with, the provisions of  
32 paragraphs (1) and (2).

33 (b) The ~~note or interest~~ shall not be sold, unless the purchaser  
34 meets one or both of the qualifications of income or net worth set  
35 forth below and signs a statement, which shall be retained by the  
36 broker for four years, conforming to the following:

37  
38 “Transaction Identifier: \_\_\_\_\_

39 Name of Purchaser: \_\_\_\_\_ Date: \_\_\_\_\_

40 Check either one of the following, if true:

Signature”

(1) Obtains from each person to whom notes and deeds of trust or interests therein are offered or sold, *at least two business days and not more than one year prior to completing each sale*, a completed investor questionnaire in a form approved by the

commissioner. After obtaining an initial questionnaire, any subsequent questionnaire from the same person need only reflect any material changes from the immediately preceding questionnaire obtained by the broker.

(2) Uses the responses in that questionnaire as an aid in complying with subdivision (a).

~~(3) On an annual basis, obtains from each person to whom notes and deeds of trust or interests therein are offered or sold, or on whose behalf they are serviced, an updated investor questionnaire, which reflects any material changes that may have occurred with respect to any of the responses to questions in the questionnaire.~~

(e) Nothing in this section shall be construed to require a broker to utilize an investor questionnaire to ensure compliance with subdivision (a). Reliance of a broker on an investor questionnaire in a form approved by the commissioner shall not prohibit that broker from utilizing additional information to ensure compliance with subdivision (a).

SEC. 3. Section 10238 of the Business and Professions Code is amended to read:

10238. (a) A notice in the following form and containing the following information shall be filed with the commissioner within 30 days after the first transaction and within 30 days of any material change in the information required in the notice:

TO: Real Estate Commissioner  
Mortgage Loan Section  
~~2201 Broadway~~ 1651 Exposition Boulevard  
Sacramento, CA 95818

This notice is filed pursuant to Sections 10237 and 10238 of the Business and Professions Code.

( ) Original Notice      ( ) Amended Notice

1. Name of Broker conducting transaction under Section 10237:

\_\_\_\_\_

2. Broker license identification number: \_\_\_\_\_

3. List the month the fiscal year ends: \_\_\_\_\_

4. Broker's telephone number: \_\_\_\_\_

- 1 5. Firm name (if different from “1”):  
2 \_\_\_\_\_  
3
- 4 6. Street address (main location):  
5 \_\_\_\_\_  
6 # and Street City State ZIP Code  
7
- 8 7. Mailing address (if different from “6”):  
9 \_\_\_\_\_  
10
- 11 8. Servicing agent: Identify by name, address, and telephone number the  
12 person or entity who will act as the servicing agent in transactions pursuant  
13 to Section 10237 (including the undersigned Broker if that is the case):  
14 \_\_\_\_\_  
15 \_\_\_\_\_  
16
- 17 9. Total number of multilender notes arranged: \_\_\_\_\_  
18
- 19 ~~10. Total number of interests sold to investors on the~~  
20 ~~multilender’s notes: \_\_\_\_\_~~  
21
- 22 ~~11.~~
- 23 10. Inspection of trust account (before answering this question, review the  
24 provisions of paragraph (3) of subdivision (k) of Section 10238).  
25 CHECK ONLY ONE OF THE FOLLOWING:  
26 ( ) The undersigned Broker is (or expects to be) required to file reports of  
27 inspection of its trust account(s) with the Real Estate Commissioner  
28 pursuant to paragraph (3) of subdivision (k) of Section 10238.  
29 Amount of Multilender Payments Collected Last Fiscal Quarter: \_\_\_\_\_  
30
- 31 Total Number of Investors Due Payments Last Fiscal Quarter: \_\_\_\_\_  
32
- 33 ( ) The undersigned Broker is NOT (or does NOT expect to be) required to  
34 file reports of inspection of its trust account(s) with the Real Estate  
35 Commissioner pursuant to paragraph (3) of subdivision (k) of Section  
36 10238.  
37
- 38 ~~12.~~
- 39 11. Signature. The contents of this notice are true and correct.  
40 \_\_\_\_\_



(d) Each parcel of real property directly securing the notes or interests shall be located in this state, the note or notes shall not by their terms be subject to subordination to any subsequently created deed of trust upon the real property, and the note or notes shall not be promotional notes secured by liens on separate parcels of real property in one subdivision or in contiguous subdivisions. For purposes of this subdivision, a promotional note means a promissory note secured by a trust deed, executed on unimproved real property or executed after construction of an improvement of the property but before the first purchase of the property as so improved, or executed as a means of financing the first purchase of the property as so improved, that is subordinate, or by its terms

1 may become subordinate, to any other trust deed on the property.  
2 However, the term “promotional note” does not include either of  
3 the following:

4 (1) A note that was executed in excess of three years prior to  
5 being offered for sale.

6 (2) A note secured by a first trust deed on real property in a  
7 subdivision that evidences a bona fide loan made in connection  
8 with the financing of the usual cost of the development in a  
9 residential, commercial, or industrial building or buildings on the  
10 property under a written agreement providing for the disbursement  
11 of the loan funds as costs are incurred or in relation to the progress  
12 of the work and providing for title insurance ensuring the priority  
13 of the security as against mechanic’s and materialmen’s liens or  
14 for the final disbursement of at least 10 percent of the loan funds  
15 after the expiration of the period for the filing of mechanic’s and  
16 materialmen’s liens.

17 (e) The ~~notes or interests~~ shall be sold by or through a real estate  
18 broker, as principal or agent. At the time the ~~interests~~ *notes* are  
19 originally sold or assigned, neither the broker nor an affiliate of  
20 the broker shall have an interest as owner, lessor, or developer of  
21 the property securing the loan, or any contractual right to acquire,  
22 lease, or develop the property securing the loan. This provision  
23 does not prohibit a broker from conducting the following  
24 transactions if, in either case, the disclosure statement furnished  
25 by the broker pursuant to subdivision (l) discloses the interest of  
26 the broker or affiliate in the transaction and the circumstances  
27 under which the broker or affiliate acquired the interest:

28 (1) A transaction in which the broker or an affiliate of the broker  
29 is acquiring the property pursuant to a foreclosure under, or sale  
30 pursuant to, a deed of trust securing a note for which the broker is  
31 the servicing agent or that the broker sold to the holder or holders.

32 (2) A transaction in which the broker or an affiliate of the broker  
33 is reselling from inventory property acquired by the broker pursuant  
34 to a foreclosure under, or sale pursuant to, a deed of trust securing  
35 a note for which the broker is the servicing agent or that the broker  
36 sold to the holder or holders.

37 (f) (1) The ~~notes or interests~~ shall not be sold to more than 10  
38 persons, each of whom meets one or both of the qualifications of  
39 income or net worth set forth below and signs a statement, which

shall be retained by the broker for four years, conforming to the following:

Transaction Identifier: \_\_\_\_\_

Name of Purchaser: \_\_\_\_\_ Date: \_\_\_\_\_

Check either one of the following, if true:

( ) My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.

( ) My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year or, in the alternative, as estimated for the current year.

\_\_\_\_\_  
Signature

(2) The number of offerees shall not be considered for the purposes of this section.

(3) ~~A husband and wife~~ *Spouses* and their dependents, and an individual and his or her dependents, shall be counted as one person.

(4) A retirement plan, trust, business trust, corporation, or other entity that is wholly owned by an individual and the individual's spouse or the individual's dependents, or any combination thereof, shall not be counted separately from the individual, but the investments of these entities shall be aggregated with those of the individual for the purposes of the statement required by paragraph (1). If the investments of any entities are required to be aggregated under this subdivision, the adjusted gross income or net worth of these entities may also be aggregated with the net worth, income, or both, of the individual.

(5) The "institutional investors" enumerated in subdivision (i) of Section 25102 or subdivision (c) of Section 25104 of the Corporations Code, or in a rule adopted pursuant thereto, shall not be counted.

(6) A partnership, limited liability company, corporation, or other organization that was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption from securities qualification is counted as one person.

(g) The notes ~~or interests~~ of the purchasers shall be identical in their underlying terms, including the right to direct or require

1 foreclosure, rights to and rate of interest, and other incidents of  
 2 being a lender, and the sale to each purchaser pursuant to this  
 3 section shall be upon the same terms, subject to adjustment for the  
 4 face or principal amount or percentage interest purchased and for  
 5 interest earned or accrued. ~~This subdivision does not preclude~~  
 6 ~~different selling prices for interests to the extent that these~~  
 7 ~~differences are reasonably related to changes in the market value~~  
 8 ~~of the loan occurring between the sales of these interests. The~~  
 9 ~~interest of each purchaser shall be recorded pursuant to~~  
 10 ~~subdivisions (a) to (e), inclusive, of Section 10234.~~

11 (h) (1) Except as provided in paragraph (2), the aggregate  
 12 principal amount of the notes ~~or interests~~ sold, together with the  
 13 unpaid principal amount of any encumbrances upon the real  
 14 property senior thereto, shall not exceed the following percentages  
 15 of the current market value of each parcel of the real property, as  
 16 determined in writing by the broker or appraiser pursuant to Section  
 17 10232.6, plus the amount for which the payment of principal and  
 18 interest in excess of the percentage of current market value is  
 19 insured for the benefit of the holders of the notes ~~or interests~~ by  
 20 an insurer admitted to do business in this state by the Insurance  
 21 Commissioner:

- |    |                |  |     |
|----|----------------|--|-----|
| 23 | (A)            | Single-family residence, owner occupied .....  | 80% |
| 24 | (B)            | Single-family residence, not owner occupied .....  | 75% |
| 25 | (C)            | Commercial <i>properties</i> and income-producing properties .....   | 65% |
| 26 | (D)            | Single-family residentially zoned lot or parcel <i>not described in</i><br>27 <i>(B) or (E)</i> which has installed offsite improvements including<br>28 drainage, curbs, gutters, sidewalks, paved roads, and utilities as<br>29 mandated by the political subdivision having jurisdiction over<br>30 the lot or parcel ..... | 65% |
| 31 | (E)            | <i>Land that produces income from crops, timber, or minerals.....</i>  | 60% |
| 32 | <del>(E)</del> |  |     |
| 33 | (F)            | Land that <i>is not income producing but</i> has been zoned for (and<br>34 if required, approved for subdivision as) commercial or<br>35 residential development .....   | 50% |
| 36 | <del>(F)</del> |  |     |
| 37 | (G)            | Other real property .....  | 35% |

38  
 39 (2) The percentage amounts specified in paragraph (1) may be  
 40 exceeded when and to the extent that the broker determines that

1 the encumbrance of the property in excess of these percentages is  
2 reasonable and prudent considering all relevant factors pertaining  
3 to the real property. However, in no event shall the aggregate  
4 principal amount of the ~~notes or interests~~ sold, together with the  
5 unpaid principal amount of any encumbrances upon the property  
6 senior thereto, exceed 80 percent of the current fair market value  
7 of improved real property or 50 percent of the current fair market  
8 value of unimproved real property, except in the case of a  
9 single-family zoned lot or parcel as defined in paragraph (1), which  
10 shall not exceed 65 percent of the current fair market value of that  
11 lot or parcel, plus the amount insured as specified in paragraph  
12 (1). A written statement shall be prepared by the broker that sets  
13 forth the material considerations and facts that the broker relies  
14 upon for his or her determination, which shall be retained as a part  
15 of the broker's record of the transaction. Either a copy of the  
16 statement or the information contained therein shall be included  
17 in the disclosures required pursuant to subdivision (l).

18 (3) A copy of the appraisal or the broker's evaluation, for each  
19 parcel of real property securing the ~~notes or interests~~, *notes*, shall  
20 be delivered to each purchaser. The broker shall advise purchasers  
21 of their right to receive a copy. For purposes of this paragraph,  
22 "appraisal" means a written estimate of value based upon the  
23 assembling, analyzing, and reconciling of facts and value indicators  
24 for the real property in question. A broker shall not purport to make  
25 an appraisal unless the person so employed is qualified on the basis  
26 of special training, preparation, or experience.

27 (4) For construction or rehabilitation loans, the term "current  
28 market value" may be deemed to be the value of the completed  
29 project if the following safeguards are met:

30 (A) An independent neutral third-party escrow holder is used  
31 for all deposits and disbursements.

32 (B) The loan is fully funded, with the entire loan amount to be  
33 deposited in escrow prior to recording of the deed or deeds of trust.

34 (C) A comprehensive, detailed, draw schedule is used to ensure  
35 proper and timely disbursements to allow for completion of the  
36 project.

37 (D) The disbursement draws from the escrow account are based  
38 on verification from an independent qualified person who certifies  
39 that the work completed to date meets the related codes and  
40 standards and that the draws were made in accordance with the

1 construction contract and draw schedule. For purposes of this  
2 subparagraph, “independent qualified person” means a person who  
3 is not an employee, agent, or affiliate of the broker and who is a  
4 licensed architect, general contractor, structural engineer, or active  
5 local government building inspector acting in his or her official  
6 capacity.

7 (E) An appraisal is completed by a qualified and licensed  
8 appraiser in accordance with the Uniform Standards of Professional  
9 Appraisal Practice (USPAP).

10 (F) In addition to the transaction documentation required by  
11 subdivision (i), the documentation shall include a detailed  
12 description of actions that may be taken in the event of a failure  
13 to complete the project, whether that failure is due to default,  
14 insufficiency of funds, or other causes.

15 (G) The entire amount of the loan does not exceed two million  
16 five hundred thousand dollars (\$2,500,000).

17 (5) If a ~~note or an interest~~ will be secured by more than one  
18 parcel of real property, for the purpose of determining the  
19 maximum amount of the ~~note or interest~~, *note*, each security  
20 property shall be assigned a portion of the ~~note or interest~~ which  
21 shall not exceed the percentage of current market value determined  
22 by, and in accordance with, the provisions of paragraphs (1) and  
23 (2).

24 (i) The documentation of the transaction shall require that (1)  
25 a default upon any ~~interest or~~ note is a default upon all ~~interests~~  
26 ~~or~~ notes and (2) the holders of more than 50 percent of the recorded  
27 beneficial interests of the ~~notes or interests~~ may govern the actions  
28 to be taken on behalf of all holders in accordance with Section  
29 2941.9 of the Civil Code in the event of default or foreclosure for  
30 matters that require direction or approval of the holders, including  
31 designation of the broker, servicing agent, or other person acting  
32 on their behalf, and the sale, encumbrance, or lease of real property  
33 owned by the holders resulting from foreclosure or receipt of a  
34 deed in lieu of foreclosure. The terms called for by this subdivision  
35 may be included in the deed of ~~trust, in the assignment of interests,~~  
36 *trust* or in any other documentation as is necessary or appropriate  
37 to make them binding on the parties.

38 (j) (1) The broker shall not accept any purchase or loan funds  
39 or other consideration from a prospective lender or purchaser, or  
40 directly or indirectly cause the funds or other consideration to be

1 deposited in an escrow or trust account, except as to a specific loan  
2 or note secured by a deed of trust that the broker owns, is  
3 authorized to negotiate, or is unconditionally obligated to buy.

4 (2) All funds received by the broker from the purchasers or  
5 lenders shall be handled in accordance with Section 10145 for  
6 disbursement to the persons thereto entitled upon recordation of  
7 the interests of the purchasers or lenders in the note and deed of  
8 trust. No provision of this article shall be construed as modifying  
9 or superseding applicable law regulating the escrow holder in any  
10 transaction or the handling of the escrow account.

11 (3) The books and records of the broker or servicing agent, or  
12 both, shall be maintained in a manner that readily identifies  
13 transactions under this article and the receipt and disbursement of  
14 funds in connection with these transactions.

15 (4) If required by paragraph (3) of subdivision (k), the review  
16 by the independent certified public accountant shall include a  
17 sample of transactions, as reflected in the records of the trust  
18 account required pursuant to paragraph (1) of subdivision (k), and  
19 the bank statements and supporting documents. These documents  
20 shall be reviewed for compliance with this article with respect to  
21 the handling and distribution of funds. The sample shall be selected  
22 at random by the accountant from all these transactions and shall  
23 consist of the following: (A) three sales made or 5 percent of the  
24 sales made pursuant to this article during the period for which the  
25 examination is conducted, whichever is greater, and (B) 10  
26 payments processed or 2 percent of payments processed under this  
27 article during the period for which the examination is conducted,  
28 whichever is greater.

29 (5) For the purposes of this subdivision, the transaction that  
30 constitutes a “sale” is the series of transactions by which a series  
31 of notes of a ~~maker, or the interests in the note of a maker,~~ *maker*  
32 are sold or issued to their various purchasers under this article,  
33 including all receipts and disbursements in that process of funds  
34 received from the purchasers or lenders. The transaction that  
35 constitutes a “payment,” for the purposes of this subdivision, is  
36 the receipt of a payment from the person obligated on the note or  
37 from some other person on behalf of the person so obligated,  
38 including the broker or servicing agent, and the distribution of that  
39 payment to the persons entitled thereto. If a payment involves an  
40 advance paid by the broker or servicing agent as the result of a

1 dishonored check, the inspection shall identify the source of funds  
2 from which the payment was made or, in the alternative, the steps  
3 that are reasonably necessary to determine that there was not a  
4 disbursement of trust funds. The accountant shall inspect for  
5 compliance with the following specific provisions of this section:  
6 paragraphs (1), (2), and (3) of subdivision (j) and paragraphs (1)  
7 and (2) of subdivision (k).

8 (6) Within 30 days of the close of the period for which the report  
9 is made, or within any additional time as the commissioner may  
10 in writing allow in a particular case, the accountant shall forward  
11 to the broker or servicing agent, as the case may be, and to the  
12 commissioner, the report of the accountant, stating that the  
13 inspection was performed in accordance with this section, listing  
14 the sales and the payments examined, specifying the nature of the  
15 deficiencies, if any, noted by the accountant with respect to each  
16 sale or payment, together with any further information as the  
17 accountant may wish to include, such as corrective steps taken  
18 with respect to any deficiency so noted, or stating that no  
19 deficiencies were observed. If the broker meets the threshold  
20 criteria of Section 10232, the report of the accountant shall be  
21 submitted as part of the quarterly reports required under Section  
22 10232.25.

23 (k) The notes ~~or interests~~ shall be sold subject to a written  
24 agreement that obligates a licensed real estate broker, or a person  
25 exempted from the licensing requirement for real estate brokers  
26 under this chapter, to act as agent for the purchasers or lenders to  
27 service the note or notes and deed of trust, including the receipt  
28 and transmission of payments and the institution of foreclosure  
29 proceedings in the event of a default. A copy of this servicing  
30 agreement shall be delivered to each purchaser. The broker shall  
31 offer to the lenders or purchasers the services of the broker or one  
32 or more affiliates of the broker, or both, as servicing agent for each  
33 transaction conducted pursuant to this article. The agreement shall  
34 require all of the following:

35 (1) (A) That payments received on the note or notes be  
36 deposited immediately to a trust account maintained in accordance  
37 with this section and with the provisions for trust accounts of  
38 licensed real estate brokers contained in Section 10145 and Article  
39 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of  
40 the California Code of Regulations.



1 (B) That payments deposited pursuant to subparagraph (A) shall  
2 not be commingled with the assets of the servicing agent or used  
3 for any transaction other than the transaction for which the funds  
4 are received.

5 (2) That payments received on the note or notes shall be  
6 transmitted to the purchasers or lenders pro rata according to their  
7 respective interests within 25 days after receipt thereof by the  
8 agent. If the source for the payment is not the maker of the note,  
9 the agent shall inform the purchasers or lenders in writing of the  
10 source for payment. A broker or servicing agent who transmits to  
11 the purchaser or lenders the broker's or servicing agent's own  
12 funds to cover payments due from the borrower but unpaid as a  
13 result of a dishonored check may recover the amount of the  
14 advances from the trust fund when the past due payment is  
15 received. However, this article does not authorize the broker,  
16 servicing agent, or any other person to issue, or to engage in any  
17 practice constituting, any guarantee or to engage in the practice of  
18 advancing payments on behalf of the borrower.

19 (3) If the broker or person who is or becomes the servicing agent  
20 for notes ~~or interests~~ sold pursuant to this article upon which the  
21 payments due during any period of three consecutive months in  
22 the aggregate exceed one hundred twenty-five thousand dollars  
23 (\$125,000) or the number of persons entitled to the payments  
24 exceeds 120, the trust account or accounts of that broker or affiliate  
25 shall be inspected by an independent certified public accountant  
26 at no less than three-month intervals during the time the volume  
27 is maintained. Within 30 days after the close of the period for  
28 which the review is made, the report of the accountant shall be  
29 forwarded as provided in paragraph (6) of subdivision (j). If the  
30 broker is required to file an annual report pursuant to subdivision  
31 (o) or pursuant to Section 10232.2, the quarterly report pursuant  
32 to this subdivision need not be filed for the last quarter of the year  
33 for which the annual report is made. For the purposes of this  
34 subdivision, an affiliate of a broker is any person controlled by,  
35 controlling, or under common control with the broker.

36 (4) Unless the servicing agent will receive notice pursuant to  
37 Section 2924b of the Civil Code, the servicing agent shall file a  
38 written request for notice of default upon any prior encumbrances  
39 and promptly notify the purchasers or lenders of any default on

1 the prior encumbrances or on the note or notes subject to the  
2 servicing agreement.

3 (5) The servicing agent shall promptly forward copies of the  
4 following to each purchaser or lender:

5 (A) Any notice of trustee sale filed on behalf of the purchasers  
6 or lenders.

7 (B) Any request for reconveyance of the deed of trust received  
8 on behalf of the purchasers or lenders.

9 (l) The broker shall disclose in writing to each purchaser or  
10 lender the material facts concerning the transaction on a disclosure  
11 form adopted or approved by the commissioner pursuant to Section  
12 10232.5, subject to the following:

13 (1) The disclosure form shall include a description of the terms  
14 upon which the note and deed of trust are being sold, including  
15 the terms of the undivided interests being offered therein, including  
16 the following:

17 (A) In the case of the sale of an existing note:

18 (i) The aggregate sale price of the note.

19 (ii) The percent of the premium over or discount from the  
20 principal balance plus accrued but unpaid interest.

21 (iii) The effective rate of return to the purchasers if the note is  
22 paid according to its terms.

23 (iv) The name and address of the escrow holder for the  
24 transaction.

25 (v) A description of, and the estimated amount of, each cost  
26 payable by the seller in connection with the sale and a description  
27 of, and the estimated amount of, each cost payable by the  
28 purchasers in connection with the sale.

29 (B) In the case of the origination of a note:

30 (i) The name and address of the escrow holder for the  
31 transaction.

32 (ii) The anticipated closing date.

33 (iii) A description of, and the estimated amount of, each cost  
34 payable by the borrower in connection with the loan and a  
35 description of, and the estimated amount of, each cost payable by  
36 the lenders in connection with the loan.

37 (C) In the case of a transaction involving a note ~~or interest~~  
38 secured by more than one parcel of real property, in addition to  
39 the requirements of subparagraphs (A) and (B):

1 (i) The address, description, and estimated fair market value of  
2 each property securing the loan.

3 (ii) The amount of the available equity in each property securing  
4 the loan after the loan amount to be apportioned to each property  
5 is assigned.

6 (iii) The loan to value percentage for each property after the  
7 loan amount to be apportioned to each property is assigned pursuant  
8 to subdivision (h).

9 (2) A copy of the written statement or information contained  
10 therein, as required by paragraph (2) of subdivision (h), shall be  
11 included in the disclosure form.

12 (3) Any interest of the broker or affiliate in the transaction, as  
13 described in subdivision (e), shall be included with the disclosure  
14 form.

15 (4) When the particular circumstances of a transaction make  
16 information not specified in the disclosure form material or  
17 essential to keep the information provided in the form from being  
18 misleading, and the other information is known to the broker, the  
19 other information shall also be provided by the broker.

20 (5) If more than one parcel of real property secures the ~~notes or~~  
21 ~~interests, notes~~, the disclosure form shall also fully disclose any  
22 risks to investors associated with securing the ~~notes or interests~~  
23 with multiple parcels of real property.

24 (m) The broker or servicing agent shall furnish any purchaser  
25 of a ~~note or interest~~, *note*, upon request, with the names and  
26 addresses of the purchasers of the other ~~notes or interests~~ in the  
27 loan.

28 (n) No agreement in connection with a transaction covered by  
29 this article shall grant to the real estate broker, the servicing agent,  
30 or any affiliate of the broker or agent the option or election to  
31 acquire the interests of the purchasers or lenders or to acquire the  
32 real property securing the interests. This subdivision shall not  
33 prohibit the broker or affiliate from acquiring the interests, with  
34 the consent of the purchasers or lenders whose interests are being  
35 purchased, or the property, with the written consent of the  
36 purchasers or lenders, if the consent is given at the time of the  
37 acquisition.

38 (o) Each broker who conducts transactions under this article,  
39 or broker or person who becomes the servicing agent for ~~notes or~~  
40 ~~interest~~ sold pursuant to this article, who meets the criteria of

1 paragraph (3) of subdivision (k) shall file with the commissioner  
2 an annual report of a review of its trust account. The report shall  
3 be prepared and filed in accordance with subdivision (a) of Section  
4 10232.2 and the rules and procedures thereunder of the  
5 commissioner. That report shall cover the broker's transactions  
6 under this article and, if the broker also meets the threshold criteria  
7 set forth in Section 10232, the broker's transactions subject to that  
8 section shall be included as well.

9 (p) Each broker conducting transactions pursuant to this article,  
10 or broker or person who becomes the servicing agent for notes or  
11 interest sold pursuant to this article, who meets the criteria of  
12 paragraph (3) of subdivision (k) shall file with the commissioner  
13 a report of the transactions that is prepared in accordance with  
14 subdivision (c) of Section 10232.2. If the broker also meets the  
15 threshold criteria of Section 10232, the report shall include the  
16 transactions subject to that section as well. This report shall be  
17 confidential pursuant to subdivision (f) of Section 10232.2.

18 SEC. 4. Section 25102.2 of the Corporations Code is amended  
19 to read:

20 25102.2. The commissioner shall require any issuer that is  
21 engaged in the business of purchasing, selling, financing, or  
22 brokering real estate, and that relies upon an exemption authorized  
23 by subdivision (e), (f), (h), or (n) of Section 25102, or subdivision  
24 (p) of Section 25100, for an offering which involves the offer or  
25 sale of securities to any person who is not an accredited investor,  
26 as defined in Regulation D of the Securities and Exchange  
27 Commission (17 C.F.R. 230.501 et seq.), in a transaction that is  
28 not registered pursuant to the Securities Act of 1933, to provide  
29 additional information regarding the nature of the proposed offering  
30 on a form prescribed by the commissioner. This information shall  
31 include the names of the issuer's officers and directors in the case  
32 of a corporation, managers in the case of a manager-managed  
33 limited liability company, members in the case of a  
34 member-managed limited liability company, general partner in the  
35 case of a limited partnership, or persons performing similar  
36 functions, in the case of other types of issuers, the offering  
37 disclosure documents provided to prospective purchasers, a list of  
38 all state and federal licenses required to further the purposes of

- 1 the investment, and the names of all licensed persons that will
- 2 undertake those activities.

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